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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 DR. ELLIOT MCGUCKEN, an individual,
12 Plaintiff,
13 v.
14 HISENSE USA CORPORATION, a
15 Georgia corporation; WALMART INC., a
16 Delaware corporation; THE AARON'S
17 COMPANY, INC., a Georgia corporation;
18 and DOES 1-10,
19 Defendants.

Case No.: 2:24-cv-03537

COMPLAINT FOR:

1. Copyright Infringement;
2. Vicarious and/or Contributory Infringement; and
3. Violation of the DMCA: 17 U.S.C. § 1202

Jury Trial Demanded

1 Dr. Elliot McGucken (“Plaintiff” or “McGucken”), by and through his
2 undersigned attorneys, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
5 *et seq.*

6 2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331
7 and 1338 (a) and (b).

8 3. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and
9 1400(a) in that this is the judicial district in which a substantial part of the acts and
10 omissions giving rise to the claims occurred.

11 **PARTIES**

12 4. Plaintiff Elliot McGucken is an individual residing in Los Angeles
13 County.

14 5. Plaintiff is informed and believes and thereon alleges that Defendant
15 Hisense USA Corporation (“Hisense”) is a Georgia corporation and is doing
16 business in and with the State of California.

17 6. Plaintiff is informed and believes and thereon alleges that Defendant
18 Walmart Inc. (“Walmart”) is a Delaware corporation and is doing business in and
19 with the State of California.

20 7. Plaintiff is informed and believes and thereon alleges that Defendant
21 The Aaron’s Company, Inc. (“Aaron’s”) is a Georgia domestic profit corporation
22 and is doing business in and with the State of California.

23 8. Defendants Does 1 through 10, inclusive, (altogether with Hisense,
24 Walmart, and Aaron’s, “Defendants”) are other parties who have infringed
25 Plaintiff’s copyright, have contributed to the infringement of Plaintiff’s copyright,
26 or have engaged in one or more of the wrongful practices alleged herein. The true
27 names, whether corporate, individual or otherwise, of Defendants Does 1 through
28 10, inclusive, are presently unknown to Plaintiff, who therefore sues said

1 Defendants by such fictitious names, and will seek leave to amend this Complaint
2 to show their true names and capacities when same have been ascertained.

3 9. Plaintiff is informed and believes and thereon alleges that at all times
4 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
5 manager, principal, alter-ego, and/or employee of the remaining Defendants and
6 was at all times acting within the scope of such agency, affiliation, alter-ego
7 relationship and/or employment; and actively participated in or subsequently
8 ratified and adopted, or both, each and all of the acts or conduct alleged, with full
9 knowledge of all the facts and circumstances, including, but not limited to, full
10 knowledge of each and every violation of Plaintiff's rights and the damages
11 proximately caused thereby.

12 **CLAIMS RELATED TO THE SUBJECT PHOTOGRAPH**

13 10. McGucken is an acclaimed photographer who created and owns the
14 original photograph depicted in **Exhibit A** attached hereto ("Subject Photograph").

15 11. McGucken registered the Subject Photograph with the U.S. Copyright
16 Office.

17 12. Prior to the acts complained of herein, McGucken published and widely
18 publicly displayed and disseminated the Subject Photograph including without
19 limitation on McGucken's website *www.mcgucken.com*.

20 13. Following McGucken's dissemination and display of the Subject
21 Photograph, Defendants, and each of them copied, reproduced, displayed,
22 distributed, created derivative works, and/or otherwise used the Subject
23 Photograph without license, authorization, or consent, including by using the
24 Subject Photograph online on *global.hisense.com*, *www.walmart.com*,
25 *www.amazon.com*, *www.aarons.com*, *www.hisense.com.co*, *www.hisense-*
26 *india.com*, *www.hisensecac.com*, *www.amazon.ca*, and *www.shophisense.com*
27 ("Infringing Uses"). The Infringing Uses were made widely and publicly available
28

1 online. True and correct, non-inclusive screen captures of the Infringing Uses are
2 included in **Exhibit A** hereto.

3 14. McGucken is informed and believes that thereon alleges that
4 Defendants, and each of them, accessed the Subject Photograph through, without
5 limitation, McGucken's website, McGucken's many features and publications, or
6 through social media, then distributed the Subject Photograph without permission
7 or authorization from McGucken to the remaining defendants.

8 15. On information and belief, Defendants displayed the Subject
9 Photograph on websites which correspond to Internet Protocol Addresses located
10 in the United States.

11 16. On information and belief, it is alleged that the Infringing Uses and/or
12 the Subject Photograph are stored on servers in the United States and the Subject
13 Photograph was distributed by Defendants, and each of them, into and/or out of the
14 United States.

15 17. Defendants, and each of them, copied the Subject Photograph from an
16 artist located in the United States.

17 18. On information and belief, it is alleged that Defendants made
18 unauthorized copies of the Subject Photograph and then cropped and edited the
19 works before adding their own name to the works and publishing the same under
20 their own name and/or a false name.

21 19. A comparison of the Subject Photograph with the corresponding images
22 of the Infringing Uses reveals that the elements, composition, colors, arrangement,
23 subject, lighting, angle, and overall appearance of the images are identical or at
24 least substantially similar.

25 20. McGucken is informed and believes and thereon alleges that
26 Defendants, and each of them, were involved in creating and/or developing the
27 Infringing Uses, and/or supplying, marketing, distributing, selling, and otherwise
28

1 providing the Infringing Uses to third parties, including without limitation, to the
2 public.

3 21. McGucken has not in any way authorized Defendants, or any of them,
4 to copy, reproduce, display, distribute, create derivative works of, or otherwise use
5 the Subject Photograph.

6 **FIRST CLAIM FOR RELIEF**

7 **(Copyright Infringement - Against All Defendants, and Each)**

8 22. McGucken repeats, re-alleges, and incorporates herein by reference as
9 though fully set forth, the allegations contained in the preceding paragraphs of this
10 Complaint.

11 23. On information and belief, McGucken alleges that Defendants, and each
12 of them, had access to the Subject Photograph, including, without limitation,
13 through (a) viewing the Subject Photograph on McGucken's website, (b) viewing
14 Subject Photograph online, (c) viewing Subject Photograph through a third party,
15 and (d) obtaining the Subject Photograph from an unknown online source. Access
16 is further evidenced by the Subject Photograph's exact reproduction in the
17 Infringing Uses.

18 24. On information and belief, McGucken alleges that Defendants, and each
19 of them, copied, reproduced, displayed, and distributed the Subject Photograph,
20 including without limitation as seen in **Exhibit A** attached hereto.

21 25. On information and belief, McGucken alleges that Defendants, and each
22 of them, infringed McGucken's copyrights by creating infringing derivative works
23 from the Subject Photograph and publishing same to the public.

24 26. Due to Defendants', and each of their, acts of infringement, McGucken
25 has suffered general and special damages in an amount to be established at trial.

26 27. Due to Defendants', and each of their, acts of copyright infringement as
27 alleged herein, Defendants, and each of them, have obtained direct and indirect
28 profits they would not otherwise have realized but for their infringement of

1 McGucken's rights in the Subject Photograph. As such, McGucken is entitled to
2 disgorgement of Defendants' profits directly and indirectly attributable to
3 Defendants' infringement of McGucken's rights in the Subject Photograph in an
4 amount to be established at trial.

5 28. On information and belief, McGucken alleges that Defendants, and each
6 of them, have committed acts of copyright infringement, as alleged above, which
7 were willful, intentional and malicious, which further subjects Defendants, and
8 each of them, to liability for statutory damages under Section 504(c)(2) of the
9 Copyright Act in the sum of up to \$150,000.00 per infringement and/or a
10 preclusion from asserting certain equitable and other defenses.

11 **SECOND CLAIM FOR RELIEF**

12 **(Vicarious and/or Contributory Copyright Infringement - Against All**
13 **Defendants, and Each)**

14 29. McGucken repeats, re-alleges, and incorporates herein by reference as
15 though fully set forth, the allegations contained in the preceding paragraphs of this
16 Complaint.

17 30. On information and belief, McGucken alleges that Defendants
18 knowingly induced, participated in, aided, and abetted in and profited from the
19 illegal reproduction and distribution of the Subject Photograph as alleged
20 hereinabove. Such conduct included, without limitation, publishing photographs
21 obtained from third parties that Defendants knew, or should have known, were not
22 authorized to be published by Defendants.

23 31. On information and belief, McGucken alleges that Defendants, and each
24 of them, are vicariously liable for the infringement alleged herein because they had
25 the right and ability to supervise the infringing conduct and because they had a
26 direct financial interest in the infringing conduct. Specifically, Defendants, and
27 each of them, profited in connection with the Infringing Uses, and were able to
28 supervise the distribution, broadcast, and publication of the Infringing Uses.

1 32. On information and belief, Plaintiff alleges that Defendants, and each of
2 them, published and authorized the re-publication of the Subject Photograph
3 without consent to third parties, financially benefited from this publication, and
4 had the right to recall the re-publications or otherwise stop or limit the
5 infringement.

6 33. On information and belief, Plaintiff alleges that Defendants, and each of
7 them, received notice that the articles and publications at issue included infringing
8 content and thereafter continued to post and distribute those articles to third parties,
9 including online, and failed to recall said posts or take steps to address the
10 infringements.

11 34. By reason of the Defendants', and each of their, acts of contributory and
12 vicarious infringement as alleged above, McGucken has suffered general and
13 special damages in an amount to be established at trial.

14 35. Due to Defendants' acts of copyright infringement as alleged herein,
15 Defendants, and each of them, have obtained direct and indirect profits they would
16 not otherwise have realized but for their infringement of McGucken's rights in the
17 Subject Photograph. As such, McGucken is entitled to disgorgement of
18 Defendants' profits directly and indirectly attributable to Defendants' infringement
19 of McGucken's rights in the Subject Photograph, in an amount to be established at
20 trial.

21 36. On information and belief, McGucken alleges that Defendants, and each
22 of them, have committed acts of copyright infringement, as alleged above, which
23 were willful, intentional and malicious, which further subjects Defendants, and
24 each of them, to liability for statutory damages under Section 504(c)(2) of the
25 Copyright Act in the sum of up to \$150,000.00 per infringement and/or a
26 preclusion from asserting certain equitable and other defenses.

27 **THIRD CLAIM FOR RELIEF**

28 **(Violation of 17 U.S.C. 1202 - Against All Defendants, and Each)**

1 37. McGucken repeats, re-alleges, and incorporates herein by reference as
2 though fully set forth, the allegations contained in the preceding paragraphs of this
3 Complaint.

4 38. McGucken regularly published the Subject Photograph with copyright
5 management information (“CMI”), as that phrase is used in 17 USC § 1202.
6 McGucken’s CMI included, without limitation, his name, company name,
7 copyright notice, metadata, and other identifying information. The CMI was
8 prominently displayed and would be viewed by visitors to McGucken’s website
9 and online profiles.

10 39. On information and belief, McGucken alleges that Defendants, and each
11 of them, intentionally removed and altered McGucken’s CMI and violated 17
12 U.S.C. § 1202(b) before copying, reproducing, distributing, and displaying the
13 Subject Photograph.

14 40. On information and belief, McGucken alleges that Defendants, and each
15 of them, did distribute or import for distribution copyright management
16 information knowing that the CMI has been removed or altered without authority
17 of McGucken or the law.

18 41. On information and belief, McGucken alleges that Defendants, and each
19 of them, did distribute and publicly display works and copies of works knowing
20 that copyright management information has been removed or altered without
21 authority of McGucken or the law, knowing, or, with respect to civil remedies
22 under 17 USC § 1203, having reasonable grounds to know, that it will induce,
23 enable, facilitate, or conceal an infringement of any right under this title.

24 42. On information and belief, McGucken alleges that Defendants, and each
25 of them, in violation of 17 USC § 1202(a), knowingly and with the intent to
26 induce, enable, facilitate, or conceal infringement provided false copyright
27 management information when they added false attribution information to uses of
28

1 the Subject Photograph, including displaying the Subject Photograph with false
2 copyright information.

3 43. On information and belief, McGucken alleges that Defendants, and each
4 of them, knew that they were providing false copyright management information to
5 its copies of the Subject Photograph and distributing copyright management
6 information that was false at the time it distributed its unauthorized copies of the
7 Subject Photograph.

8 44. Defendants, and each of them, removed and falsified the copyright
9 management information relevant to the Subject Photograph knowing that it would
10 conceal and facilitate the infringement at issue.

11 45. The above conduct is in violation of the Digital Millennium Copyright
12 Act and exposes Defendants, and each of them, to additional and enhanced
13 common law and statutory damages, attorneys' fees, and penalties pursuant to 17
14 USC § 1203 and other applicable law.

15 46. On information and belief, McGucken alleges that Defendants', and
16 each of their, conduct as alleged herein was willful, reckless, and/or with
17 knowledge, and McGucken resultantly seeks enhanced damage and penalties.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment as follows:

20 **Against all Defendants, and Each:**

21 **With Respect to Each Claim for Relief:**

- 22 a. That Defendants, and each of them, as well as their employees,
23 agents, or anyone acting in concert with them, be enjoined from
24 infringing Plaintiff's copyright in the Subject Photograph, including,
25 without limitation, an order requiring Defendants, and each of them,
26 to remove the Subject Photograph from their respective websites,
27 marketing and advertisement materials.

- b. That Plaintiff be awarded all profits of Defendants, and each of them, plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants, and each of them, through their infringement, the exact sum to be proven at the time of trial, and/or, to the extent available, statutory damages as available under the 17 U.S.C. § 504, 17 U.S.C. § 1203, and other applicable law.
- c. That a constructive trust be entered over any revenues or other proceeds realized by Defendants, and each of them, through their infringement of Plaintiff's intellectual property rights;
- d. That Plaintiff be awarded his attorneys' fees as available under the Copyright Act U.S.C. §§ 505, 1203, *et seq.*;
- e. That Plaintiff be awarded his costs and fees under the statutes set forth above;
- f. That Plaintiff be awarded statutory damages and/or penalties under the statutes set forth above;
- g. That Plaintiff be awarded pre-judgment interest as allowed by law;
- h. That Plaintiff be awarded the costs of this action; and
- i. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Respectfully submitted,

Dated: April 30, 2024

By: /s/ Scott Alan Burroughs
Scott Alan Burroughs, Esq.
Frank R. Trechsel, Esq.
DONIGER / BURROUGHS
Attorneys for Plaintiff